IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1089 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

GOPIRAM SURAJMAL SHARMA

Versus

NANDLAL JETHAJI SONI

Appearance:

MR YN RAVANI for Appellants

MR KV SHELAT for Respondent No. 1

DELETED for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/08/98

ORAL JUDGEMENT

1. This appeal is on behalf of the owner and insurer, of the vehicle involved in the motor vehicular accident in which the claimant-respondent No.1 has sustained the injuries against the award of Motor Accident Claims Tribunal No.II at Ahmedabad in M.A.C.P. NO.66 of 1990 decided on 31-12-1997. Under the impugned award, the Motor Accident Claims Tribunal No.II at

Ahmedabad awarded Rs.56000/- to the claimant-respondent No.1 towards the compensation with running interest at the rate of 15% p.a. from the date of filing of the application till realisation. It has further been ordered that in case the amount of compensation is paid within a period of two months from the date of award, the interest shall be calculated at the rate of 12% per annum. Further direction has been given for the disbursement and investment of the awarded amount.

2. Challenging the impugned award, Shri Y.N. Ravani, learned counsel for the appellant made four contentions. Firstly, it is contended that the vehicle belonging to the appellant No.1 and insured by the appellant No.2 was not involved in the accident. Second contention has been made that the claimant-respondent No.1 has not produced on record of the Tribunal in this case, proof of his income. Third contention has been made that the Tribunal has taken the prospective income and not the actual income for the purpose of determining the amount of compensation awarded of future loss. In support of this contention, learned counsel for the appellants placed reliance on the decision of this court in the case of R. Vishvanathan vs. Dipal @ Deval Alkeshkumar Kantilal in First Appeal No.552 of 1997 decided on 28-2-1997. Lastly, it is contended that the applicant-respondent-claimant has not sustained any future loss and zero compensation should have been awarded under the head of future economic loss. Carrying this contention further, learned counsel for the appellants contended that whatever it may be the view taken by this court in this respect, in this case the multiplier of 12 adopted is towards the higher side and the multiplier should have been only of 5. In support of this contention, learned counsel for the appellants placed reliance on the decision of this court in the case of State of Gujarat vs. Somabhai Dhurabhai Sindhava & Ors. reported in 1993 (2) GLR 1043.

3. Shri K.V. Shelat, learned counsel for the respondent vehemently contended that none of the contentions raised by the learned counsel for the appellants has any merits. The vehicle involved in the accident and what is the income of the claimants are pure questions of fact. The learned Tribunal on the basis of appreciation of evidence which has come on record has recorded a finding of fact on these questions of fact to which no exception may be taken. Replying to the third contention, learned counsel for the respondent contended that the Tribunal has taken the income of the applicant-claimant-respondent towards the lower side.

Even if it is taken that the prospective income could not have been taken into consideration for arriving at the figure of future loss of the claimant-respondent due to the injury sustained in the accident, the income of the applicant taken on the date of accident is towards the lower side. Similarly, the multiplier which has been adopted is also towards the lower side in this case with reference to the Schedule attached to the Act, 1988 which is though may not have retrospective effect, provides a guiding factor as to what multiplier should have been taken. Replying to the last contention, learned counsel for the respondent submitted that the view as expressed by this Court in the case of State of Gujarat vs. Somabhai Dhurabhai Sindhava (supra) has not been accepted in the later decision of this court in the case of Mohanbhai Gemabhai vs. Balubhai Savjibhai reported in 1994 (1) ACJ 260.

4. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

Re: Contention No.1.

5. The claimant-respondent No.1 has been examined by the Tribunal in this case at Ex.34. In his deposition he made a statement on oath that on 24-8-1989 when he was going on his scooter bearing registration No. GUG 5183 from his house situated at Sarvodaya Society to his Pathology Laboratory situated at Gomtipur Popatiyawad, the truck bearing registration No.GTB 6604 came from his back at a great speed and dashed with his scooter, as a result, he fell down from the scooter and sustained injuries. In rebuttal, the appellant No.1, the owner of the truck aforesaid has been examined at Ex.43. In his statement he has admitted that he owned the truck bearing registration No.GTB 6604. He has come up with the case that on the date of alleged accident, his truck was in garage for repairs, which is situated opposite to Kankaria railway yard. As his truck was not on the road, there is no question of any accident to be caused by it on 24-8-1989. The factum of accident has not been denied. However, the Tribunal has found that in the cross-examination he has admitted that there is no documentary evidence available with him to show that on that date his truck was place for repairs in the garage. The Tribunal has further noticed that he is unable to state before it what expenditure he incurred for repairing of his truck. Thus his total denial of non-involvement of the vehicle in the accident in the presence of the aforesaid material fact came from his

cross-examination has rightly been not accepted by the Tribunal. The theory that his truck had been sent for repairs to the garage on the fateful day in the given facts of the case has rightly been not accepted by the Tribunal. The Tribunal has not committed any error in observing that the owner of the vehicle has not produced either oral or documentary evidence to substantiate his theory as propounded in the evidence. The appellant No.1 has not produced on the record of the case any bill of repairs or any bill of purchase of any of the parts of the truck. Not only this, no person from the garage where the truck was stated to be put for repairs has been examined. In the presence of these facts and the set of evidence produced on behalf of the appellant No.1, the conclusion drawn by the Tribunal that the truck was involved in accident and the accident was caused as a result of rash and negligent driving of the driver of the truck in which the claimant-respondent sustained injuries cannot be said to be perverse. These are the findings of facts and when the same are based on appreciation of the evidence, no exception to the same can be taken by the appellate court. These findings of fact cannot be interfered by this court sitting in appeal unless the same are perverse or there is no evidence in support of these findings or where the material piece of evidence has been ignored or evidence has been misread. Not only this, but to arrive at the conclusion in favour of the claimant-respondent that the truck was involved in the accident, the evidence of claimant and other documentary evidence have been relied upon. The Tribunal has referred to the statements of the claimant respondent and the documents, complaint Ex.20 and panchnama Ex. 21. So the first contention raised by the learned counsel for the appellants is of no substance.

Re : Contention No.2.

6. The claimant-respondent in his statements recorded before the Tribunal has given out his monthly income to be of Rs.3200/- on the date of the accident. Learned counsel for the appellants does not dispute that in the rebuttal of the aforesaid evidence of the claimant-respondent for his monthly income, no evidence has been produced by the appellants. Much emphasis has been placed by the learned counsel for the appellants on the fact that the documentary evidence which has been produced on the point of monthly income of the claimant-respondent has not been accepted by the Tribunal but still it has arrived at a figure of Rs.1800 p.m. as his income on the date of the accident which is wholly arbitrary and unjustified. The claimant-respondent

produced on the record of these proceedings, certificate Ex.22 from his employer where he was working as technician and therein his income has been certified to be of Rs.1737/- p.m.. The Tribunal has noticed that this certificate is of 22-11-1990 and it gives out the figure of monthly income which the claimant-respondent was drawing on 11-12-1986. On the basis of this discrepancy in the certificate aforesaid, the learned Tribunal has not relied upon the same. After discarding the certificate, the Tribunal has not considered the oral statement made by the claimant-respondent for his monthly income on the date of accident but his income was taken to be of Rs.1800/-p.m. and his notional income has been taken to be of Rs.3000/- p.m. for the purpose of arriving at a just, adequate and reasonable figure of compensation under the head of future loss. Even if it is taken that the prospective income of the claimant could not have been taken into consideration for the purpose of arriving at a figure of future economic loss resulted from the injuries sustained to him in the motor vehicular accident but I fail to see the rationality, reasonability and legality in the approach of the Tribunal to believe the monthly income of the claimant-respondent to be Rs.1800/-. The way and the manner in which the certificate of income, produced by the claimant-respondent, has been discarded by the Tribunal appears to be not reasonable and justified. The Tribunal has misdirected itself merely on the basis of the date of issue of certificate. Merely on suspicion or conjectures this certificate should not have been brushed aside. The Tribunal has failed to notice a fact that the appellants have not produced any evidence in rebuttal. So in the absence of any contrary evidence put forth from the respondent ordinarily this certificate should have been accepted. This figure of Rs.1737/- refers to the monthly salary of the claimant-respondent of 11-12-1986 and the date of accident in this case is 24-8-1989. So within this period of two years and six months naturally the increase in the monthly income has to be taken. If we go by this figure, then the monthly income of the claimant-respondent would have been much more than what it has been taken to be on the date of accident by the Tribunal. The income of the claimant-respondent on 11-12-1986 itself was Rs.1737/-/- i.e. very close to the figure of Rs.1800/- and in the given facts of the case what I feel that the statement given by the claimant-respondent of his monthly income on the date of accident of Rs.3200/- per month seems to be a reasonable figure. The monthly income which has been arrived at by taking notional income of the claimant-respondent of Rs.3000-/ p.m. for future loss cannot be said to be

unreasonable.

7. This question may be examined from another angle. If the contention of the learned counsel for the appellants is accepted that the income certificate which has been produced by the claimant-respondent could not have been accepted and rightly it has not been accepted by the Tribunal and further that the figure of Rs.1800/taken by the Tribunal could not have been taken still in this appeal no interference is called for. Excluding this from the list of evidence and further in case the prospective income could not have been taken into consideration for determining the just and reasonable compensation to be awarded under the head of loss of future income, monthly income as given by the claimant-respondent in his own statement, which statement is not challenged, should have been accepted and if we go by this figure then the monthly income would have been much more than what it has been taken by the Tribunal. So even if the matter is considered from any angle, no exception can be taken to the judgment of the Tribunal on the point of monthly income which has been taken of the claimant-respondent.

Re : Contention No.3

8. In view of the discussion as made and decision given on contention No.2, I am of the opinion that this contention need not be gone into by this court.

Re : Contention No.4

9. Learned counsel for the appellants after going through the judgment of this court in the case of Mohanbhai Gemabhai vs. Balubhai Savjibhai (supra) has frankly conceded that the ratio of this court in the case of State of Gujarat vs. Somabhai Dhurabhai Sindhava (supra) no more now holds the field and that ratio seems to be not correct. He conceded that even if there is no loss of future income still as it is a case of disability sustained by the claimant-respondent in a motor vehicular accident, the compensation for future income has to be awarded. In view of this concession made and the position of law which emerges from the decision of this court in the case of Mohanbhai Gemabhai vs. Balubhai Savjibhai (supra) this point also does not detain me any more.

10. Only point now remains is what should be the reasonable figure of multiplier to be applied in this case i.e. 12 as it is applied by the Tribunal or 5 as

what the learned counsel for the appellants contended. The whole contention of the learned counsel for the appellants to press for applying multiplier of 5 in this case is based on the decision of this court in the case of State of Gujarat vs. Somabhai Dhurabhai Sindhava (supra) and when this decision itself is not accepted by this court, the contention cannot be accepted. The schedule which has been attached to the Motor Vehicles Act, 1988 by amendment thereof, though it may not have retrospective effect but the courts have observed in some of the case that it can be taken to be a guideline while deciding the case coming up before courts after the schedule though pertaining to the date of accident much earlier to the inception of this schedule in the Act. From this schedule, I find that for the injured of the age group of 35 to 40, the multiplier could have been of 16. So looking to this fact, the multiplier of 12 which has been applied by the Tribunal in this case cannot be said to be towards the higher side.

No other point has been raised.

11. In the result , this appeal fails and the same is dismissed.

12. The claimant has unnecessarily been dragged into litigation on the grounds which have no merits. The claimant-respondent has to spend an amount of Rs.5000/towards the professional fees paid to his advocate. It is not the fault of the claimant or he is not responsible in any manner for filing of this appeal. He has come up before this court only on the invitation of the appellants though through this court, which cost him Rs.5000/- only towards the head of professional fees paid to the advocate. Learned counsel for the respondent submitted that in addition to the amount paid towards the professional fees more amount has been spent by the respondent towards other expenses but for which I do not find any details. It is a fit case where the respondent-claimant deserves to be compensated for the amount which has been spent by him in defending this appeal. The statement made by the learned counsel for the respondent that he has charged and respondent has paid to him Rs. 5000/towards the professional fees has not been controverted by the counsel for the appellants. The insurance company in fact has joined the owner as appellant in this appeal for its own benefits, otherwise it has only statutory defence to be projected before this court, to make this appeal to be wider in scope and to make submissions on the points which otherwise are not available to the insurance company. From the contentions

which have been made by the learned counsel for the appellants it is not difficult to infer also that purposefully the owner has been impleaded as party to this appeal so that the insurance company may have challenged the award on the grounds which are otherwise not available to it. So it is a case where the appellant No.2 is solely responsible and has to bear the amount of costs awarded to the respondent-claimant. The appellant No.2 is directed to pay to the respondent-claimant Rs.5000/- by way of costs of this appeal.

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